

**BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. CC2009-111

ARNOLD MILTON VOLLMER
6860 Avenida Encinas
Carlsbad, CA 92008

Optometrist License No. 6375

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the State Board of Optometry, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on January 19, 2012.

It is so ORDERED December 20, 2011



FOR THE STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 ANTOINETTE B. CINCOTTA
Deputy Attorney General
4 State Bar No. 120482
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2095
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
10 **STATE BOARD OF OPTOMETRY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. CC2009-111

14 **ARNOLD MILTON VOLLMER**
15 **6860 Avenida Encinas**
16 **Carlsbad, CA 92008**

Optometrist License No. 6375

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

Respondent.

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
18 proceeding that the following matters are true:

19 **PARTIES**

20 1. Mona Maggio (Complainant) is the Executive Officer of the State Board of
21 Optometry (Board). She brought this action solely in her official capacity and is represented in
22 this matter by Kamala D. Harris, Attorney General of the State of California, by Antoinette B.
23 Cincotta, Deputy Attorney General.

24 2. Arnold Milton Vollmer (Respondent) is represented in this proceeding by attorney
25 Paul Spackman, Esq., whose address is 28441 Highridge Road, Suite 201, Rolling Hills Estates,
26 CA 90274-4871.

27 ///

28 ///

1 3. On or about October 3, 1977, the Board issued Optometrist License No. 6375 to
2 Arnold Milton Vollmer (Respondent). The Optometrist License expired on July 31, 2009, and
3 has not been renewed.

4 JURISDICTION

5 4. Accusation No. CC2009-111 was filed before the Board, and is currently pending
6 against Respondent. The Accusation and all other statutorily required documents were properly
7 served on Respondent on November 4, 2010. Respondent timely filed his Notice of Defense
8 contesting the Accusation. A copy of Accusation No. CC2009-111 is attached as Exhibit A and
9 incorporated by reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. CC2009-111. Respondent also has carefully read,
13 fully discussed with counsel, and understands the effects of this Stipulated Surrender of License
14 and Order.

15 6. Respondent is fully aware of his legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
17 his own expense; the right to confront and cross-examine the witnesses against him; the right to
18 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
19 the attendance of witnesses and the production of documents; the right to reconsideration and
20 court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 CULPABILITY

25 8. Respondent understands that the charges and allegations in Accusation No.
26 CC2009-111, if proven at a hearing, constitute cause for imposing discipline upon his Optometrist
27 License.

28 ///

9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.

10. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Optometrist License without further process.

CONTINGENCY

11. This stipulation shall be subject to approval by the State Board of Optometry.

Respondent understands and agrees that counsel for Complainant and the staff of the State Board of Optometry may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

///

1 14. In consideration of the foregoing admissions and stipulations, the parties agree that
2 the Board may, without further notice or formal proceeding, issue and enter the following Order:

3 **ORDER**

4 IT IS HEREBY ORDERED that Optometrist License No. 6375 issued to Respondent
5 Arnold Milton Vollmer is surrendered and accepted by the State Board of Optometry.

6 15. The surrender of Respondent's Optometrist License and the acceptance of the
7 surrendered license by the Board shall constitute the imposition of discipline against Respondent.
8 This stipulation constitutes a record of the discipline and shall become a part of Respondent's
9 license history with the Board.

10 16. Respondent shall lose all rights and privileges as an optometrist in California as of the
11 effective date of the Board's Decision and Order.

12 17. Respondent shall cause to be delivered to the Board his pocket license and, if one was
13 issued, his wall certificate on or before the effective date of the Decision and Order.

14 18. If Respondent ever files an application for licensure or a petition for reinstatement in
15 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
16 comply with all the laws, regulations and procedures for reinstatement of a revoked license in
17 effect at the time the petition is filed, and all of the charges and allegations contained in
18 Accusation No. CC2009-111 shall be deemed to be true, correct and admitted by Respondent
19 when the Board determines whether to grant or deny the petition.

20 19. If Respondent should ever apply or reapply for a new license or certification, or
21 petition for reinstatement of a license, by any other health care licensing agency in the State of
22 California, all of the charges and allegations contained in Accusation, No. CC2009-111 shall be
23 deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of
24 Issues or any other proceeding seeking to deny or restrict licensure.

25 20. Respondent shall pay the Board its costs of investigation and enforcement in the
26 amount of \$3,425.25 prior to issuance of a new or reinstated license.

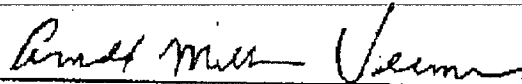
27 ///

28 ///

ACCEPTANCE


I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Paul Spackman, Esq. I understand the stipulation and the effect it will have on my Optometrist License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the State Board of Optometry.

DATED: Oct 4, 2011


ARNOLD MILTON VOLLMER
Respondent

I have read and fully discussed with Respondent Arnold Milton Vollmer the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: Oct 4, 2011


PAUL SPACKMAN, ESQ.
Attorney for Respondent

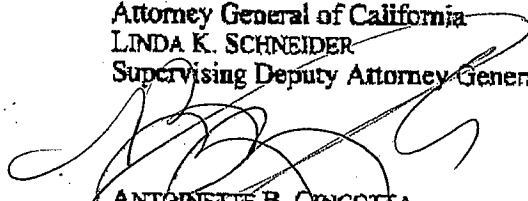
ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the State Board of Optometry of the Department of Consumer Affairs.

Dated: 10/6/2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General


ANTOINETTE B. CINCOTTA
Deputy Attorney General
Attorneys for Complainant

2010701994
0426054.doc

Exhibit A

Accusation No. CC2009-111

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 ANTOINETTE B. CINCOTTA
Deputy Attorney General
4 State Bar No. 120482
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2095
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
STATE BOARD OF OPTOMETRY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. CC 2009-111

12 **ARNOLD MILTON VOLLMER**
13 **6860 Avenida Encinas**
14 **Carlsbad, CA 92008**

A C C U S A T I O N

15 **Optometrist License No. 6375**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Mona Maggio (Complainant) brings this Accusation solely in her official capacity as
20 the Executive Officer of the State Board of Optometry, Department of Consumer Affairs (Board).

21 2. On or about October 3, 1977, the State Board of Optometry issued Optometrist
22 License Number 6375 to Arnold Milton Vollmer (Respondent). On or about March 26, 2002,
23 Respondent was certified by the Board to utilize Therapeutic Pharmaceutical Agents and
24 authorized to diagnose and treat the conditions listed in subdivisions (b), (d), and (e) of Business
25 and Professions Code section 3041. The Optometrist License expired on July 31, 2009, and has
26 not been renewed.

27 ///

28 ///

JURISDICTION/STATUTORY AUTHORITY

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 3110 of the Code states:

"The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

". . . .

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions.

"(d) Incompetence.

". . . ."

6. Section 3041 states in relevant part:

"(a) The practice of optometry includes the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system, as well as the provision of rehabilitative optometric services, and is the doing of any or all of the following:

"(1) The examination of the human eye or eyes, or its or their appendages, and the analysis of the human vision system, either subjectively or objectively.

///

///

1 “(2) The determination of the powers or range of human vision and the accommodative and
2 refractive states of the human eye or eyes, including the scope of its or their functions and general
3 condition.

4 “....

5 “(b)(1) An optometrist who is certified to use therapeutic pharmaceutical agents, pursuant
6 to Section 3041.3, may also diagnose and treat the human eye or eyes, or any of its or their
7 appendages, for all of the following conditions:

8 “....

9 “(G) Pursuant to subdivision (f), glaucoma in patients over 18 years of age, as described in
10 subdivision (j).

11 “....

12 “(j) For purposes of this chapter, “glaucoma” means either of the following:

13 “(1) All primary open-angle glaucoma.

14 “....”

15 7. Section 3041.1 of the Code states: "With respect to the practices set forth in
16 subdivisions (b), (d), and (e) of Section 3041, optometrists diagnosing or treating eye disease
17 shall be held to the same standard of care to which physicians and surgeons and osteopathic
18 physicians and surgeons are held."

19 COST RECOVERY

20 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
21 administrative law judge to direct a licentiate found to have committed a violation or violations of
22 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
23 enforcement of the case.

24 FACTS

25 9. Normal Tension Glaucoma (NTG) is a form of primary open-angle glaucoma
26 (POAG) characterized by glaucomatous optic neuropathy in patients with normal intraocular
27 pressure measurements consistently lower than 21 mmHg (millimeters of mercury). Unlike
28 POAG where high pressure causes direct damage to the nerve cells, the cause of glaucomatous

1 damage in NTG is believed to be from an insufficient blood supply to the eye. Since intraocular
2 pressure (IOP) in NTG is within normal range, measuring intraocular pressure alone is
3 insufficient to detect normal-tension glaucoma. A thorough glaucoma screening assessment of
4 the optic nerve by an experienced examiner and visual field testing to detect scotomas (blind
5 spots) are critical for early accurate diagnosis of NTG. Left undiagnosed and untreated, NTG
6 slowly and gradually leads to blindness.

7 10. On or about December 2, 2004, patient F.M., age 61, presented to Kaiser where he
8 was seen by Respondent for his first of four visits with him. Respondent noted a change in
9 patient F.M.'s eyeglass prescription and diagnosed him with blepharitis (inflammation of the
10 eyelids). As a result, Respondent prescribed new eyeglasses and treated patient F.M.'s blepharitis
11 condition with warm compresses, lid scrubs, and artificial tears. Respondent did not perform
12 intraocular pressure (IOP) measurements during this visit or perform field testing. However,
13 Respondent did evaluate patient F.M.'s optic nerves and recorded a cup-to-disc (C/D) ratio of 0.3
14 in each eye.

15 11. On or about September 11, 2006, patient F.M. returned to Kaiser where he was again
16 seen by Respondent. Patient F.M. complained of distance blur. Respondent noted minimal
17 changes in patient F.M.'s eyeglass prescription. As routine testing, Respondent measured patient
18 F.M.'s intraocular pressure at 13 and 17 mmHg, and recorded a C/D ratio of 0.4 measurements.
19 Respondent did not perform any field testing.

20 12. On or about July 30, 2007, patient F.M. returned to Kaiser where he was again seen
21 by Respondent. Patient F.M. complained of blurred vision mainly while reading. Respondent
22 again noted minimal changes in the patient's spectacle prescription and diagnosed meibomianitis
23 for which he prescribed lid hygiene and artificial tears. Respondent recorded the patient's IOP
24 and C/D ratio measurements as 16 and 0.4 H (horizontal)/0.4 V (vertical), respectively, in both
25 eyes. Respondent made no mention of glaucoma. Respondent did not perform any field testing.

26 13. On or about December 18, 2007, patient F.M. returned to Kaiser where he was
27 again seen by Respondent. Patient F.M. complained of blurred vision and "things running
28 together when reading." Respondent again noted minimal changes in the patient's spectacle

1 prescription and diagnosed meibomianitis for which he prescribed lid hygiene and artificial tears.

2 Respondent did not perform IOP measurements during this visit and recorded the same C/D ratio
3 (0.4 H/0.4 V) in each eye as the previous visit of July 30, 2007. Again Respondent made no
4 mention of glaucoma. Respondent did not perform any field testing.

5 14. On or about September 22, 2008, patient F.M. returned to Kaiser. This time he
6 was seen by his new primary care physician. During this visit, the primary care physician noted

7 that Patient F.M. had presented with six months of gradually progressing "perception problems"
8 interfering with his daily driving. The primary care physician also noted that the patient
9 complained of being "slowed in interpreting what he is visually seeing/reading" and feeling
10 "impaired enough that he doesn't feel safe driving unfamiliar areas, or for distances greater than
11 10 minutes." The primary care physician performed a confrontational visual field examination on
12 Patient F.M., which revealed a "possible bitemporal hemianopsia [loss of vision in one half of the
13 visual field of one or both eyes]." As a result, the primary care physician ordered visual field
14 testing as well as an immediate evaluation by an ophthalmologist. In addition, to rule out tumor,
15 the primary care physician ordered a brain MRI per tumor protocol and a consultation with a
16 neurologist.

17 15. On or about September 26, 2008, Patient F.M. returned to Kaiser where he was
18 evaluated by an ophthalmologist. After examination and testing, the ophthalmologist diagnosed
19 Patient F.M. with "severe previously undiagnosed low tension glaucoma." The ophthalmologist
20 also evaluated Patient F.M.'s optic nerves and recorded a C/D ratio of 0.8 and 0.9 on the right and
21 left eye, respectively. In addition, visual field testing also revealed significant superior visual
22 field loss in both eyes. As a result, the ophthalmologist prescribed glaucoma medication to treat
23 Patient F.M.'s condition.

24 CAUSE FOR DISCIPLINE

25 (Gross Negligence, Repeated Negligent Acts, Incompetence)

26 16. Respondent is subject to disciplinary action under section Code section 3041,
27 subsections (b), (c), and/or (d) in that Respondent engaged in acts of gross negligence, repeated
28 negligence, and/or incompetence in the diagnosis and treatment of a patient with glaucoma as set


1 forth in paragraphs 9 through 15 above, which are incorporated here by this reference, by
2 repeatedly failing to diagnose Normal Tension Glaucoma in Patient F.M. because Respondent
3 repeatedly failed to accurately assess damage to Patient F.M.'s optic nerves through accurate
4 assessments of Patient F.M.'s cup-to-disc (C/D) ratio and/or visual field testing.

5 **PRAYER**

6 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
7 and that following the hearing, the State Board of Optometry issue a decision:

- 8 1. Revoking or suspending Optometrist License Number 6375 issued to Arnold Milton
9 Vollmer;
10 2. Ordering Arnold Milton Vollmer to pay the State Board of Optometry the reasonable
11 costs of the investigation and enforcement of this case, pursuant to Business and Professions
12 Code section 125.3;
13 3. Taking such other and further action as deemed necessary and proper.

14 DATED: October 28, 2010


15 MONA MAGGIO
16 Executive Officer
17 State Board of Optometry
18 Department of Consumer Affairs
19 State of California
20 Complainant

21 SD2010701994
22 70361378.docx
23
24
25
26
27
28

DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL

(Separate Mailings)

Case Name: **Accusation Against: Arnold Vollmer**

No.: **CC 2009-11**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On November 4, 2010, I served the attached:

**STATEMENT TO RESPONDENT, ACCUSATION, NOTICE OF DEFENSE, (2 copies),
REQUEST FOR DISCOVERY, AND DISCOVERY STATUTES**

by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the

**STATEMENT TO RESPONDENT, ACCUSATION, NOTICE OF DEFENSE, (2 copies),
REQUEST FOR DISCOVERY, AND DISCOVERY STATUTES**

was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Arnold Milton Vollmer
6860 Avenida Encinas
Carlsbad, CA 92008

Certified Article Number

7160 3901 9849 2268 7857

SENDERS RECORD

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 4, 2010, at San Diego, California.

Claudia Chavez-Estrada
Declarant


Signature

DECLARATION OF SERVICE BY CERTIFIED MAIL

I, the undersigned, declare that I am over 18 years of age and not a party to the cause;
my business address is 2420 Del Paso Road, Suite 255, Sacramento, CA 95834. I
served a true copy of the attached:

~~Arnold Milton Vollmer, OPT 6375~~
Board of Optometry Case Number CC 2009-111

by certified mail on the following, by placing same in an envelope addressed as follows:

NAME AND ADDRESS

CERT NO.


Antoinette B. Cincotta, Deputy Attorney General
Office of the Attorney General
110 "A" Street, Suite 1100
San Diego, CA 92101

7008 1830 0003 2855 4408

Said envelope was then, on October 28, 2010, sealed and deposited in the United States mail at Sacramento, California, the county in which I am employed, as certified mail, with the postage thereon fully prepaid, and return receipt requested.

Executed on October 28, 2010, at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Margie McGavin, DECLARANT